

1 ANDRÉ BIROTTE JR.
United States Attorney
2 ROBERT E. DUGDALE
Assistant United States Attorney
3 Chief, Criminal Division
E. MARTIN ESTRADA (Cal. SBN: 223802)
4 JOSEPH McNALLY (Cal. SBN: 250289)
Assistant United States Attorneys
5 1500 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-3358
7 Facsimile: (213) 894-3713
Email: Martin.Estrada@usdoj.gov
8 Joseph.McNally@usdoj.gov

9 Attorneys for Plaintiff
UNITED STATES OF AMERICA
10

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 ARMAN SHAROPETROSIAN, *et al.*,
18 Defendants.
19
20

No. SA CR 09-248(B)-DOC

GOVERNMENT'S POSITION RE: PRE-
SENTENCE REPORT AND SENTENCING OF
ARMAN SHAROPETROSIAN (#1); EXHIBIT

21
22 Plaintiff, by and through its attorney of record, the United
23 States Attorney for the Central District of California, hereby files
24 its position regarding the Presentence Report ("PSR") submitted by
25 the United States Probation Office for defendant ARMAN
26 SHAROPETROSIAN ("defendant").

27 ///

28 ///

1 The government's sentencing position is based on the attached
2 memorandum of points and authorities, the PSR, attached exhibit, the
3 records and files of this case, and any argument that the Court may
4 request at the sentencing hearing. The government respectfully
5 requests the opportunity to supplement its position as may become
6 necessary.

7 Dated: November 26, 2012

Respectfully submitted,

8 ANDRÉ BIROTTE JR.
9 United States Attorney

10 ROBERT E. DUGDALE
11 Assistant United States Attorney
Chief, Criminal Division

12
13 /s/
E. MARTIN ESTRADA
14 JOSEPH McNALLY
Assistant United States Attorneys

15 Attorneys for Plaintiff
16 UNITED STATES OF AMERICA
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1 18, United States Code, Section 1028A. Co-defendants KAREN
2 MARKOSIAN ("MARKOSIAN"), KRISTINE OGANDZHANYAN ("OGANDZHANYAN"), and
3 ARTUSH MARGARYAN ("MARGARYAN") also went to trial and were
4 convicted.

5 On June 19, 2012, the United States Probation Office ("USPO")
6 disclosed to the parties its Presentence Report ("PSR") in this
7 matter. The USPO found that SHAROPETROSIAN was subject to a base
8 offense level of 7 under U.S.S.G. § 2B1.1(a)(1), an 18-level upward
9 adjustment for loss exceeding \$2,500,000, but not more than
10 \$7,000,000 under U.S.S.G. § 2B1.1(b)(1)(J), a 4-level upward
11 adjustment for 50 or more victims under U.S.S.G. § 2B1.1(b)(2)(B), a
12 2-level upward adjustment for sophisticated means under U.S.S.G. §
13 2B1.1(b)(10)(C), a 2-level upward adjustment for vulnerable-victim
14 under U.S.S.G. § 3A1.1(b)(1), and 4-level increase for being a
15 leader or organizer under U.S.S.G. 3B1.1(a). See PSR ¶¶ 74-97. The
16 USPO further determined that SHAROPETROSIAN's criminal history
17 category is category IV. See PSR ¶¶ 126-27. With a total offense
18 level of 37 and a category IV criminal history, the resulting
19 Sentencing Guidelines range of imprisonment for Counts 1, 24, 25,
20 30, and 31 is 292 to 365 months incarceration. See PSR ¶ 171.
21 Further, the USPO noted that SHAROPETROSIAN was subject to at least
22 one 24-month consecutive sentence for Counts 51, 52, 54, 59, 66, 67,
23 and 70, charging him with Aggravated Identity Theft, in violation of
24 Title 18, United States Code, Section 1028A. See PSR ¶¶ 72, 137.
25 Based on these calculations, the USPO recommends a sentence of 316
26 months imprisonment (292 months for Counts 1, 24, 25, 30, and 31;
27 plus 24 months on Counts 51, 52, 54, 59, 66, 67, and 70), to be
28 followed by five-years supervised release.

1 Although the government agrees with the bulk of the facts and
2 calculations set forth in the PSR, the government believes that a 2-
3 level upward adjustment for use of a means of identification to
4 produce another means of identification, see U.S.S.G. §
5 2B1.1(b)(11)(C)(i), also applies here. With this adjustment,
6 SHAROPETROSIAN's total offense level is 39, resulting in a range of
7 imprisonment of 360 to life for Counts 1, 24, 25, 30, and 31.
8 Further, in light of the widespread nature of the scheme, and the
9 callousness of SHAROPETROSIAN's crimes, the government believes that
10 at least two of SHAROPETROSIAN's Aggravated Identity Theft
11 convictions should be ordered to run consecutively.

12 Accordingly, under the Sentencing Guidelines and the factors
13 set forth in 18 U.S.C. § 3553(a), the government recommends that
14 SHAROPETROSIAN be sentenced to 408 months imprisonment (360 months
15 for Counts 1, 24, 25, 30, and 31; plus 24 months on Counts 51, 52,
16 54, 66, 67, and 70, and 24 months on Count 59), followed by five-
17 years supervised release, and a mandatory special assessment of
18 \$1,200.

19 **II. FACTUAL BACKGROUND**

20 The evidence at trial showed the following:

21 **A. The Scheme to Defraud**

22 Beginning on an unknown date, but at least as early as 2005,
23 defendants executed a sophisticated bank fraud scheme throughout
24 Southern California, primarily in Los Angeles and Orange Counties.
25 The scheme targeted individual victim bank accounts (the "victim-
26 accounts") and involved obtaining confidential account information
27 followed by the cashing of fraudulent checks against the victim-
28

1 account. Over the approximate six-year duration of the fraudulent
2 scheme, defendants conspired to cause millions of dollars in losses.

3 Although the scheme varied slightly with each victim-account,
4 defendants and their co-conspirators followed the same general
5 sequence of steps:

6 (1) Defendants would obtain confidential bank account
7 information for a victim-account, typically by bribing employees
8 working at the target banks. In doing so, defendants targeted high-
9 value bank accounts and requested customer profile information,
10 which included the account information and the corresponding
11 personal identifying information for the victim-account owners.

12 (2) After obtaining information for the victim-account,
13 defendants and other co-conspirators would call the customer service
14 line at the target bank and pose as the victim-account owner to
15 obtain bank account information and/or order bank checks. During
16 some of these calls, defendants and other co-schemers would also
17 make changes to the victim-account information, such as transferring
18 funds in between accounts or changing the telephone numbers or
19 addresses associated with the account.

20 (3) After placing an unauthorized check order for a victim-
21 account, defendants and their co-conspirators would steal the checks
22 from the victims' addresses, or change the victims' address so that
23 the checkbook would simply get delivered to an address controlled by
24 defendants or a co-conspirator.

25 (4) In addition to ordering checks for a victim-account,
26 defendants would obtain a copy of the victims' signatures. In some
27 instances, defendants would obtain an image of a victim-account
28 owner's signature from bank insiders; in other cases, defendants

1 used the victim-account owner's personal identifying information to
2 obtain public record documents bearing the victim-account owner's
3 signature (i.e., property deeds).

4 (5) After obtaining the checkbooks, defendants would prepare
5 fraudulent checks. By using information obtained when calling
6 customer service regarding recent transactions, defendants could
7 make certain that the number for the fraudulent check followed the
8 number for the most recent check written for the victim-account.
9 Defendants would forge the victim-account owners' signature on the
10 fraudulent check.

11 (6) Defendants then deposited the checks into accounts they
12 controlled to launder the criminal proceeds. In some instances, the
13 bank would attempt to verify the check by calling a number
14 associated with the victim-account. To avoid alerting the bank of
15 the fraud, defendants would either (1) ensure that the number
16 associated with the account was a fictitious number, (2) change the
17 number associated with the victim-account to a telephone number
18 controlled by defendants, or (3) constantly call the victim account
19 owner's true telephone at the time the fraudulent check was being
20 cashed to cause a busy signal.

21 **B. Wiretap Employed on SHAROPETROSIAN's Telephones**

22 During the course of a related investigation into Armenian
23 organized crime groups (United States v. Darbinyan, et al., CR 11-
24 72(A)-DDP), agents obtained a court-authorized wiretap on telephones
25 being used by SHAROPETROSIAN. Wire interception took place from
26 July 2009 to September 2009. Although he was incarcerated at the
27 time, SHAROPETROSIAN had obtained smuggled cellular telephones to
28 communicate with criminal associates outside of the jail without

1 being monitored. The calls intercepted over the wiretap on two
2 telephones used by SHAROPETROSIAN establish, among other things,
3 that SHAROPETROSIAN and another inmate, co-defendant Angus Brown
4 ("Brown"), were working together to execute the above-described bank
5 fraud scheme. The intercepted calls show that BROWN and
6 SHAROPETROSIAN, would communicate with co-conspirators, including
7 co-defendants MARKOSIAN, OGANDZHANYAN, LEWELLYN COX ("COX"), KELLY
8 BENSON ("BENSON"), DAMIAN WADSACK ("WADSACK"), OGANES TANGABAKYAN
9 ("TANGABAKYAN"), VERGINE GASPARIAN ("GASPARIAN"), and FAYE BELL
10 ("BELL"), regarding aspects of the fraud scheme. In particular,
11 defendants were intercepted exchanging victim's personal identifying
12 information, calling banks for information, ordering checks for
13 victim-accounts, and instructing co-conspirators on how to prepare
14 fraudulent checks. In addition, over several intercepted calls,
15 defendants discussed working together and sharing the proceeds of
16 the fraud amongst the various participants of the scheme.

17 In addition to intercepting criminal conversations, agents
18 conducted surveillance and did searches in support of the wiretap.
19 For instance, on August 6, 2009, co-defendants MARGARYAN and
20 HOVHANNES DILBOYAN ("DILBOYAN") were arrested by officers of the
21 Burbank Police Department ("BPD") following a traffic stop during
22 which officers found a fraudulent check for \$44,730.17 in the name
23 of one of the scheme's victims, victim J.L. They had been seen
24 receiving the check from OGANDZHANYAN just prior to their arrest.
25 Incident to his arrest, officers searched DILBOYAN, and inside
26 DILBOYAN's pocket, officers found a thumb drive. Pursuant to a
27 search warrant, the thumb drive was later searched and found to
28 contain, among other things, over 1,000 debit card numbers, bank

1 account numbers, and credit card numbers in the names of other
2 people.

3 Further, in February 2011, agents arrested defendants and
4 searched the residences of, among others, OGANDZHANYAN and
5 MARGARYAN's residences. Among the evidence recovered pursuant to
6 the search warrants at the various locations were images of customer
7 profile information, photographs of defendants forging signatures on
8 checks, documents containing victims' personal identifying
9 information, images of fraudulent checks, and victim-account
10 numbers.

11 **III. THE GOVERNMENT'S SENTENCING RECOMMENDATION**

12 In determining facts for sentencing, courts apply a
13 preponderance standard, absent extreme circumstances, in which case
14 a clear-and-convincing standard applies. See United States v. Dare,
15 425 F.3d 634, 642 (9th Cir. 2005). Indeed, the Supreme Court has
16 held that a court may consider even acquitted conduct in its
17 sentencing calculations if it finds that the government has proved
18 the conduct by a preponderance of the evidence. United States v.
19 Watts, 519 U.S. 148, 157 (1997) (per curiam). Under a preponderance
20 of the evidence standard, or even a clear-and-convincing standard,
21 the USPO's factual findings and Sentencing Guidelines enhancements
22 are fully supported by the evidence in this case. In addition,
23 SHAROPETROSIAN is subject to an additional 2-level upward adjustment
24 for use of a means of identification to obtain another means of
25 identification under U.S.S.G. § 2B1.1(b)(11)(C)(i).

26 SHAROPETROSIAN's total offense level, therefore, is 39, and,
27 with a criminal history category of IV, his recommended range of
28 imprisonment is 360 to life months for Counts 1, 24, 25, 30, and 31.

1 **A. The Sentencing Guidelines Calculation**

2 The base offense level for Counts 1, 24, 25, 30, and 31 is 7
3 under U.S.S.G. § 2B1.1(a)(1).

4 1. Loss Amount

5 In terms of calculating loss amount, SHAROPETROSIAN is
6 responsible for all reasonably foreseeable acts and omissions of
7 others in furtherance of the jointly undertaken conspiracy, and all
8 acts that were part of the same course of conduct or common scheme
9 or plan as the conspiracy. See U.S.S.G. § 1B1.3(a)(1)(B), (a)(2).
10 In light of these standards, the USPO held SHAROPETROSIAN
11 accountable for all relevant conduct that occurred between July 1,
12 2009 and April 18, 2010, when SHAROPETROSIAN left Avenal State
13 Prison. See PSR ¶ 78. These calculations result in a total of
14 \$1,565,576.33 that was fraudulently obtained from victim bank
15 accounts, and another \$3,247,445.98 that conspirators attempted to
16 obtain, for a total of \$4,813,022.31 of actual and intended loss -
17 comfortably within the range of an 18-level upward adjustment for
18 loss amount exceeding \$2,500,000 under U.S.S.G. § 2B1.1(b)(1)(J).
19 See PSR ¶ 81; see also Declaration of James Mikkelson; Loss
20 Calculation Spreadsheet (filed under seal as Ex. A to Gov't's
21 Position Re Defendant Angus Brown and incorporated by reference).

22 SHAROPETROSIAN claims that the Court should look only at the
23 specific victims he referenced in wiretap calls because he was not
24 "responsible" for BROWN's criminal conduct. See PSR ¶ 73. This
25 claim is meritless. Although SHAROPETROSIAN now seeks to divorce
26 himself from the fraud committed by BROWN and his other co-
27 conspirators, the evidence shows that he was fully immersed in their
28 criminal conduct, and that the losses they caused were therefore

1 foreseeable to him. In one call, SHAROPETROSIAN told his mother,
2 GASPARIAN, with reference to BROWN, "It is the black guy that works
3 with me . . . The books they bring home . . . The books . . . He is
4 the one. We work **together** from here." (8/30/09 call, Trial Exhibit
5 93 (emphasis added).) Further, in a joint call with BROWN,
6 SHAROPETROSIAN told WADSACK, "We're working together . . . We're a
7 team. We're going to make this work . . . I been doing this shit
8 for ten years." (8/31/09 call, Trial Exhibit 80.)

9 What is more, even if the Court were to consider only the
10 victims and accounts referenced and victimized by the trial
11 defendants - SHAROPETROSIAN, MARKOSIAN, OGANDZHANYAN, and MARGARYAN
12 - and BROWN, those approximately twenty-one accounts result in an
13 intended loss of approximately \$2,660,076.77, as those were the
14 values of the accounts at the time defendants attempted to victimize
15 them. See Chart Re: Referenced Victims, attached as Exhibit 1.
16 Although law enforcement, through the wiretap and good police work,
17 thwarted most of defendants' efforts to harm the victims, defendants
18 intended to fully drain the accounts.

19 In one call, BROWN referenced a victim who had approximately
20 \$400,000 in combined accounts, and stated, "We're gonna get 400
21 before they even know it's gone . . . we're gonna try and do like .
22 . . four big ones the first day." (8/5/09 call, Trial Exhibit 40.)
23 Further, when discussing stealing from victim J.L., SHAROPETROSIAN
24 told MARKOSIAN that the account had approximately "134" (\$134,000),
25 with regard to preparing the fraudulent checks, "I'm writing one for
26 48 . . . I'm writing another one for 53. And I'm writing another
27 one for the rest. I'm giving you three pieces. Take care of one of
28 them today. You'll withdraw that one tomorrow. Tomorrow you'll

1 deposit the other one and the third one you'll do the day after."
2 (8/9/09 call, Trial Exhibit 46.)

3 Therefore, an 18-level upward adjustment for loss amount
4 exceeding \$2,500,000, but not more than \$7,000,000, applies here
5 under U.S.S.G. § 2B1.1(b)(1)(J).

6 2. Victim Enhancement

7 Likewise, between July 1, 2009 and April 18, 2010 the scheme
8 resulted in 114 individuals whose means of identification were
9 compromised through the scheme. See PSR ¶¶ 79, 83 As such,
10 SHAROPETROSIAN is also subject to a 4-level upward adjustment for 50
11 or more victims under U.S.S.G. § 2B1.1(b)(2)(B).

12 3. Sophisticated Means

13 An enhancement under Section 2B1.1(b)(10)(C) for "sophisticated
14 means" applies to "especially complex or especially intricate
15 offense conduct pertaining to the execution or concealment of an
16 offense." See U.S.S.G. § 2B1.1, cmt. 8(B). As an example of
17 sophistication, the Sentencing Guidelines state that "in a
18 telemarketing scheme, locating the main office of the scheme in one
19 jurisdiction but locating soliciting operations in another
20 jurisdiction ordinarily indicates sophisticated means." Id.

21 Courts have held that "[o]ffense conduct is sophisticated if it
22 displays 'a greater level of planning or concealment'" than a
23 typical fraud scheme. See United States v. Wayland, 549 F.3d 526,
24 528 (7th Cir. 2008) (quoting United States v. Robinson, 538 F.3d
25 605, 607 (7th Cir. 2008)). For instance, the Ninth Circuit applied
26 the "sophisticated means" enhancement in United States v. Egu, 379
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28

1 Fed. Appx. 605 (9th Cir. 2010),¹ when it held that a "sophisticated
2 means" enhancement was properly included where the defendant
3 "fraudulently opened new credit accounts using the victims' personal
4 identifiers . . . had fraudulently-purchased goods delivered to
5 upscale, vacant homes in order to avoid detection; and made bursts
6 of purchases on new credit accounts before creditors shut the
7 accounts down." Id. at 607. Further, the court held that "the
8 district court properly considered the number of victims" in
9 applying the "sophisticated means" enhancement, "because the use of
10 multiple victims to obtain multiple cards was a sign of
11 sophistication." Id.

12 Here, the scheme that SHAROPETROSIAN was involved in was
13 "complex" or "especially intricate" in its execution and
14 concealment. Defendants compartmentalized the scheme into numerous
15 components to avoid detection: different conspirators would obtain
16 victim account information from bank insiders, call bank customer
17 service lines to obtain information and order checks, steal the
18 checks from victims' homes, forge and prepare the checks, and go to
19 banks to cash and deposit the checks. Indeed, defendants went so
20 far as to use public records (i.e., deeds of trust) to obtain
21 victims' signatures.

22 In addition, defendants used complex and intricate means to
23 conceal the proceeds of their illegal activities. Defendants used
24

25 ¹ Pursuant to Federal Rule of Appellate Procedure 32.1, "a
26 court may not prohibit or restrict the citation of federal judicial
27 opinions" that have been designated unpublished but "issued on or
28 after January 1, 2007." Fed. R. App. P. 32.1(a). Under Ninth
Circuit Rule 36-3, unpublished dispositions "issued on or after
January 1, 2007 may be cited to the courts of this circuit in
accordance with FRAP 32.1."

1 accounts they controlled (often through identities they had stolen
2 or purchased) to launder proceeds of bank fraud and thereby conceal
3 their activities and avoid detection. Many of these accounts were
4 fictitious entities and businesses that did not actually exist. See
5 U.S.S.G. § 2B1.1, note 8(B). SHAROPETROSIAN confirmed these means
6 in intercepted telephone calls. In one call, SHAROPETROSIAN told
7 WADSACK, "All these things that I'm using it is our people that
8 [are] going back to my country. You get what I'm saying? . . . I
9 wash them so we can do it at the end all day. I'm in the medical
10 business. You get what I'm saying?" (8/31/09 call, Trial Exhibit
11 80.) Then, BROWN took the telephone and further explained, "You
12 see how . . . I told you he filters the account? . . . He ships
13 people out of the country, so we don't have to deal with the
14 alphabet [law enforcement]." (Id.)

15 For instance, with regard to the fraudulent check for
16 \$44,730.17 from victim J.L. that was seized from MARGARYAN and
17 DILBOYAN, defendants made the fraudulent check in the name of "Gagik
18 Karapetyan." Officers also found, inside MARGARYAN's pocket, a
19 blank check for a bank account for the fictitious business Varaz
20 Apparel. Review of the bank records showed that the fictitious
21 account was one of many money laundering accounts being used by
22 defendants to receive and launder proceeds of bank fraud, including
23 fraudulent checks in the name of "Gagik Karapetyan." (Trial Exhibit
24 132.) Defendants used and referenced various such laundering
25 accounts.

26 The facts clearly show that SHAROPETROSIAN is subject to a two-
27 level enhancement for "sophisticated means" under Section
28 2B1.1(b)(10)(C).

1 4. Use of Means of Identification

2 A 2-level upward adjustment for use of a means of
3 identification to obtain another means of identification under
4 U.S.S.G. § 2B1.1(b)(11)(C)(i) also applies here. The Ninth Circuit
5 has instructed that "[t]he Guidelines, including enhancements, are
6 ordinarily applied in light of available commentary, including
7 application notes." United States v. Lambert, 498 F.3d 963, 966
8 (9th Cir. 2007). The application notes for Section
9 2B1.1(b)(11)(C)(i) state that the enhancement applies "in a case in
10 which a means of identification other than the defendant . . . is
11 used without that individual's authorization unlawfully to produce
12 or obtain another means of identification." See U.S.S.G. § 2B1.1,
13 n.9(C). As examples, the application notes state that the
14 enhancement applies where a "defendant obtains an individual's name
15 and social security number from a source . . . and obtains a bank
16 loan in that individual's name," and where a "defendant obtains an
17 individual's name and address from a source . . . and applies for,
18 obtains, and subsequently uses a credit card in that individual's
19 name." Id.; see United States v. Gutierrez, 453 Fed. Appx. 705, 706
20 (9th Cir. 2011) (applying 2-level enhancement for use of a means of
21 identification to obtain another means of identification where
22 defendant used "a customer's signature to obtain a loan for his own
23 benefit").

24 Here, defendants' unlawfully obtained victims' means of
25 identification, including names, account numbers, social security
26 numbers, and dates of birth, and used them to obtain another means
27 of identification, namely, bank checks in those victims' names.
28 SHAROPETROSIAN's conduct falls squarely within the examples set

1 forth in Section 2B1.1(b)(11)(C)(i)'s application notes.

2 Accordingly, the 2-level enhancement under Section

3 2B1.1(b)(11)(C)(i) applies.

4 5. Vulnerable Victim

5 A 2-level increase applies if "the defendant knew or should
6 have known that a victim of the offense was a vulnerable victim."

7 See U.S.S.G. § 3A1.1(b)(1). "Vulnerable victim" is defined as "a
8 person (A) who is a victim of the offense of conviction and any
9 conduct for which the defendant is accountable under § 1B1.3

10 (Relevant Conduct); and (B) who is unusually vulnerable due to age,
11 physical or mental condition, or who is otherwise particularly
12 susceptible to the criminal conduct." See U.S.S.G. § 3A1.1, cmt.

13 n.2. A vulnerable victim need not be the technical victim of the
14 convicted offense, and need only suffer harm or significant
15 inconvenience from the defendant's conduct. See United States v.

16 Medrano, 241 F.3d 740, 745 n.4 (9th Cir. 2001). Courts routinely
17 apply the "vulnerable victim" enhancement to fraud targeting elderly
18 victims. See United States v. Williams, 441 F.3d 716, 725-26 (9th
19 Cir. 2006) (finding).

20 Here, SHAROPETROSIAN's fraud and identity theft targeted
21 vulnerable victims: elderly individuals. This was not by accident
22 but by design - the defendants' express purpose was to target bank
23 customers with large value accounts who were not proficient in
24 checking up on their accounts via the internet. Defendant BROWN, in
25 discussing victim J.B., stated in one call, "You know, he was born
26 in the late, late, late 1920s so we're going to be able to knock his
27 head in . . . because he don't have anything, no internet . . . none
28 of that shit." (See (8/14/09 call, Trial Exhibit 95.) Earlier,

1 BROWN had told another conspirator, "One of them dudes is born in
2 1926 . . . Do you know how old that is? . . . So we going to be able
3 to clean his crop. Don't even trip . . . The older they are, the
4 less they got internet. Feel me? . . . When they that age, ain't no
5 internet, so we can just take it and take over." (See 8/13/09 call,
6 Trial Exhibit 113.)

7 SHAROPETROSIAN was fully aware of the conspiracy's objective of
8 targeting older victims. In one call, while discussing with another
9 conspirator the need to misappropriate more bank customer
10 information, SHAROPETROSIAN stated, "Let me ask you something. Tell
11 him to try to let go of Asians and bring other people, and bring
12 older people." (8/20/09 call, Trial Exhibit 73.) Accordingly, a
13 vulnerable victim enhancement is warranted here.

14 6. Role Enhancement

15 Under U.S.S.G. § 3B1.1(a), a 4-level increase applies where a
16 SHAROPETROSIAN is "an organizer or leader of criminal activity that
17 involved five or more participants or was otherwise extensive." A
18 court may impose this enhancement if there is "evidence that the
19 defendant exercised some control over others involved in the
20 commission of the offense or was responsible for organizing others
21 for the purpose of carrying out the crime." United States v.
22 Ingham, 486 F.3d 1068, 1074 (9th Cir. 2007); see also United States
23 v. Pena, 380 Fed. Appx. 623, 626 (9th Cir. 2010) (holding that
24 "organizer-leader" enhancement applied to a mail fraud defendant who
25 enlisted and supervised four other individuals in a scheme). "A
26 single incident of persons acting under a defendant's direction is
27 sufficient evidence to support" a role enhancement. United States
28 v. Maldonado, 215 F.3d 1046, 1050 (9th Cir. 2000).

1 Here, the evidence unequivocally showed that SHAROPETROSIAN was
2 responsible for organizing and coordinating the scheme from prison,
3 and that he exercised control over others. Indeed, in the
4 intercepted wiretap calls, SHAROPETROSIAN repeatedly directed
5 MARKOSIAN, OGANDZHANYAN, GASPARIAN, TANGABAKYAN, and others to
6 obtain victim information, deliver checks, forge checks, and deposit
7 checks. Thus, a role enhancement is warranted.

8 **B. Acceptance of Responsibility**

9 Despite the fact that he took his case to trial, put the
10 government to its burden in all aspects of the case, and conceded no
11 elements of the offense at trial, SHAROPETROSIAN seeks some form of
12 credit for acceptance of responsibility. (Def. Position Paper at 4-
13 5.) No such credit should be permitted here.

14 In order to receive a downward adjustment for acceptance of
15 responsibility under U.S.S.G. § 3E1.1, "a defendant must truthfully
16 admit the conduct comprising the offense and manifest adequate
17 contrition for his or her actions in a timely manner." United
18 States v. Schneider, 429 F.3d 888, 892 (9th Cir. 2005) (emphasis
19 added). When a defendant goes to trial, the adjustment is given
20 only "[i]n rare situations" when a defendant nonetheless clearly
21 demonstrates acceptance of responsibility. See U.S.S.G. § 3E1.1,
22 n.2. In United States v. Hicks, 368 F.3d 801 (7th Cir. 2004), for
23 instance, the Seventh Circuit held that in order to receive an
24 acceptance-of-responsibility adjustment based on defendant's
25 challenge at trial only to drug quantity, defendant "was obligated
26 to make [his limited challenge to drug quantity] known ahead of
27 time" so that "the government would not waste resources preparing to
28 prosecute him for the crimes." *Id.* at 808.

1 Here, despite SHAROPETROSIAN's after-the-fact assertions,
2 SHAROPETROSIAN never made known that he was going to trial only to
3 contest certain sentencing enhancements. To the contrary,
4 SHAROPETROSIAN indicated to the Court, clearly and unequivocally,
5 that he wished to go to trial to contest all issues, including
6 guilt. Further, any suggestion that SHAROPETROSIAN indicated
7 acceptance of responsibility by electing to proceed with a court-
8 trial, rather than a jury-trial, is specious. The Court made clear
9 to defendants prior to the beginning of trial, that whether they
10 chose a court-trial or jury trial, they would receive every trial
11 right to which they were entitled, including the presumption of
12 innocence and placing the burden of proof on the government. The
13 Court honored defendants' wishes and afforded them a fair and
14 complete trial.

15 What is more, even SHAROPETROSIAN's own statement to the USPO
16 demonstrates his continued refusal to accept responsibility. In his
17 statement to the USPO, SHAROPETROSIAN, while claiming that he
18 accepted responsibility, nonetheless stated "I do not believe that I
19 should be held responsible for the crimes committed by Angus Brown
20 and the other individuals who were involved in the [bank] fraud long
21 before I ever came to Avenal." See PSR ¶ 73. Yet, the evidence
22 shows, contrary to SHAROPETROSIAN's claim, that he fully partnered
23 with BROWN in furthering and directing the conspiracy. In a July
24 27, 2009 call to an unidentified conspirator, "Art LNU,"
25 SHAROPETROSIAN stated "We will work with them, with this group . . .
26 He is a black guy . . . He is serving time with me, bro. He works
27 directly from here . . . He can bring the legitimate books, the
28

1 papers! . . . He orders and gets them, dear bro." (7/27/09 call,
2 Trial Exhibit 5.)

3 Accordingly, SHAROPETROSIAN merits no credit, either under the
4 Sentencing Guidelines or § 3553(a), for acceptance of
5 responsibility.

6 **C. The § 3553(a) Factors**

7 A sentencing court must start with the sentence advised by the
8 Sentencing Guidelines. United States v. Booker, 543 U.S. 220, 264
9 (2005) ("The district courts, while not bound to apply the
10 Guidelines, must consult those Guidelines and take them into account
11 when sentencing."). The Ninth Circuit has held that the Sentencing
12 Guidelines sentence is a "starting point" to determine a reasonable
13 sentence and that a sentence under the Sentencing Guidelines will
14 usually be reasonable. See United States v. Carty, 520 F.3d 984,
15 994 (9th Cir. 2008) (en banc).

16 Here, the § 3553(a) factors favor the recommended sentence.
17 Section 3553(a)(1) requires the Court to consider the nature and
18 circumstances of the offense, and the history and characteristics of
19 the defendant. SHAROPETROSIAN's offense, which was both far
20 reaching and complex, was particularly egregious. Defendants stole
21 the identities and account information of hundreds of victims and
22 then sought to use that information to plunder the victims' life
23 savings. In carrying out the scheme, defendants expressly targeted
24 vulnerable victims - elderly individuals who would be less likely to
25 quickly become aware of the theft.

26 SHAROPETROSIAN seeks a lesser sentence because he claims that
27 his criminal conduct did not result "in any actual loss." (Def.
28 Position Paper at 6.) Apart from the fact that this is factually

1 incorrect, (see Chart at Exhibit A), SHAROPETROSIAN entirely misses
2 the point. The only reason defendants were unable to wipeout the
3 victims' life savings was because officers were listening to his
4 calls and thwarting his plot by freezing targeted accounts, seizing
5 stolen checks, and arresting co-conspirators.

6 Nevertheless, even though officers had successfully stopped
7 much of the fraud, SHAROPETROSIAN was determined to continue the
8 scheme. On August 31, 2009, after officers had seized numerous
9 checks, arrested co-conspirators, and frozen dozens of accounts,
10 SHAROPETROSIAN discussed with BROWN and WADSACK making greater
11 efforts to make sure the scheme would generate criminal proceeds:
12 "Listen to me, we're working together . . . I'm trying to fix the
13 problem so we can make money . . . We're a **team**. We're going to
14 make this work. You get what I'm saying? I don't care . . . give a
15 damn how much it takes." (8/31/09 call, Trial Exhibit 80 (emphasis
16 added).) SHAROPETROSIAN described the nature of the problem: "We
17 get the books in our hands . . . We get to the part where the
18 deposit and this shit blows up in our faces, homes." (Id.)
19 SHAROPETROSIAN made clear that he was committed to continuing the
20 conspiracy: "We'll just work it together. I'll keep on
21 communicating with you so we can do something good, okay? . . .
22 We're **partners**." (Id. (emphasis added).)

23 Moreover, SHAROPETROSIAN's history and characteristics favor
24 the recommended sentence. SHAROPETROSIAN has a disturbing criminal
25 history, involving numerous offenses involving assault, theft, and
26 firearms. See PSR ¶¶ 112-25. SHAROPETROSIAN's convictions only
27 tell part of the story. They stem from his role as a leader of the
28 Armenian Power criminal enterprise. For instance, his 2003

1 convictions for shooting at occupied vehicle, carrying a concealed
2 firearm, and assault with a firearms, were from consolidated cases
3 that occurred in 2001 and 2002. Further, they were pled down from
4 attempted murder with a gang enhancement, in which he and another
5 Armenian Power member were involved in drive-by shootings. See PSR
6 ¶¶ 117-20.

7 It was while serving his ten-year sentence for the drive-by
8 shootings that SHAROPETROSIAN engaged in the bank fraud and identity
9 theft conspiracy. What is more, SHAROPETROSIAN himself admitted
10 during the investigation that the convictions he had sustained were
11 only the tip of the iceberg with regard to his criminal conduct:
12 Speaking with WADSACK about the bank fraud scheme, SHAROPETROSIAN
13 said, "I been doing this shit for **ten years**." (8/31/09 call, Trial
14 Exhibit 80 (emphasis added).)

15 Further, Section 3553(a)(2), which requires the Court to
16 consider the need for the sentence to reflect the seriousness of the
17 offense, to promote respect for the law, to provide just punishment
18 for the offense, to afford adequate deterrence to criminal conduct,
19 to protect the public from further crimes of defendant, also favors
20 the recommended sentence. As can be seen from SHAROPETROSIAN's
21 criminal history, numerous arrests and convictions have failed to
22 cause him to cease his criminal activity. In fact, the instant
23 offenses were committed while SHAROPETROSIAN was incarcerated in a
24 state prison facility serving a 10-year sentence. Therefore, a much
25 lengthier sentence is needed here to promote respect for the law and
26 protect the public from SHAROPETROSIAN.

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28 ///

1 **IV. CONCLUSION**

2 Accordingly, under the Sentencing Guidelines and § 3553(a), the
3 government recommends that SHAROPETROSIAN be sentenced to 408 months
4 imprisonment (360 months for Counts 1, 24, 25, 30, and 31; plus 24
5 months on Counts 51, 52, 54, 66, 67, and 70, and 24 months on Count
6 59), followed by five-years supervised release, and a mandatory
7 special assessment of \$1,200.